

§ 540.802

licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart E of part 501 of this chapter.

[66 FR 38555, July 25, 2001, as amended at 68 FR 53658, Sept. 11, 2003]

§ 540.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13159 of June 21, 2000 (65 FR 39279, June 26, 2000) and any further executive orders relating to the national emergency declared in Executive Order 13159 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 540.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 545—TALIBAN (AFGHANISTAN) SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

545.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

545.201 Prohibited transactions involving blocked property.

545.202 Effect of transfers violating the provisions of this part.

31 CFR Ch. V (7–1–04 Edition)

545.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

545.204 Prohibited exportation, reexportation, sale, or supply of goods, software, technology, or services.

545.205 Prohibited importation of goods, software, technology, or services.

545.206 Evasions; attempts; conspiracies.

545.207 Expenses of maintaining blocked property; liquidation of blocked accounts.

545.208 Exempt transactions.

Subpart C—General Definitions

545.301 Blocked account; blocked property.

545.302 Effective date.

545.303 Entity.

545.304 Importation into the United States.

545.305 Information or informational materials.

545.306 Interest.

545.307 Licenses; general and specific.

545.308 Person.

545.309 Property; property interest.

545.310 The Taliban.

545.311 Territory of Afghanistan controlled by the Taliban.

545.312 Transfer.

545.313 United States.

545.314 U.S. financial institution.

545.315 United States person; U.S. person.

Subpart D—Interpretations

545.401 Reference to amended sections.

545.402 Effect of amendment.

545.403 Transactions incidental to a licensed transaction authorized.

545.404 Transshipment or transit through the United States prohibited.

545.405 [Reserved]

545.406 Exportation of services; performance of service contracts; legal services.

545.407 Services performed in the territory of Afghanistan controlled by the Taliban.

545.408 Offshore transactions.

545.409 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

545.410 Acquisition of instruments including bankers acceptances.

545.411 Exportation to third countries; transshipments.

545.412 Release of goods originating in the territory of Afghanistan controlled by the Taliban from a bonded warehouse or foreign trade zone.

545.413 Importation of goods from third countries; transshipments.

545.414 Loans or extensions of credit.

545.415 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

545.416 Termination and acquisition of an interest in blocked property.

545.417 Setoffs prohibited.

Office of Foreign Assets Control, Treasury

§ 545.101

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

- 545.500 Licensing procedures.
- 545.501 Effect of license or authorization.
- 545.502 Exclusion from licenses.
- 545.503 Payments and transfers to blocked accounts in U.S. financial institutions.
- 545.504 Entries in certain accounts for normal service charges authorized.
- 545.505 Importation of goods, software, or technology exported from the territory of Afghanistan controlled by the Taliban prior to July 6, 1999.
- 545.506 Importation of certain gifts authorized.
- 545.507 Accompanied baggage authorized.
- 545.508 Transactions related to telecommunications authorized.
- 545.509 Transactions related to mail authorized.
- 545.510 Importation of household and personal effects authorized.
- 545.511 Registration of nongovernmental organizations for humanitarian or religious activities.
- 545.512 Payment of obligations to U.S. persons authorized.
- 545.513 Provision of certain legal services authorized.
- 545.514 Payments for services rendered by the Taliban to aircraft.
- 545.515 Certain transactions related to patents, trademarks, and copyrights authorized.
- 545.516 Certain payments to or from the territory of Afghanistan controlled by the Taliban.
- 545.517 Authorization of emergency medical services.
- 545.518 Investment and reinvestment of certain funds.
- 545.519 Payments and transfers authorized for goods and services exported to the territory of Afghanistan controlled by the Taliban prior to the effective date.
- 545.520 Noncommercial personal remittances to and from the territory of Afghanistan controlled by the Taliban.
- 545.521 Transactions related to U.S. citizens residing in the territory of Afghanistan controlled by the Taliban.
- 545.522 Operation of accounts.
- 545.523 Extensions or renewals of letters of credit authorized.
- 545.524 Extensions or renewals of loans.
- 545.525 Certain services related to participation in various events and activities authorized.
- 545.526 Certain imports for diplomatic or official personnel authorized.
- 545.527 Diplomatic pouches.

Subpart F—Reports

- 545.601 Records and reports.

Subpart G—Penalties

- 545.701 Penalties.
- 545.702 Prepenalty notice.
- 545.703 Response to prepenalty notice; informal settlement.
- 545.704 Penalty imposition or withdrawal.
- 545.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

- 545.801 Procedures.
- 545.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

- 545.901 Paperwork Reduction Act notice.

AUTHORITY: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13129, 64 FR 36759, 3 CFR, 1999 Comp., p. 200.

SOURCE: 66 FR 2729, Jan. 11, 2001, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 545.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 545.201 Prohibited transactions involving blocked property.

(a) Except as otherwise authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, property or property interests of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons are blocked, and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

- (1) The Taliban; and
- (2) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General:
 - (i) To be owned or controlled by, or to act for or on behalf of, the Taliban; or
 - (ii) To provide financial, material, or technological support for, or services in support of, any of the foregoing.

NOTE TO PARAGRAPH (A) OF § 545.201. Please refer to the appendices at the end of this chapter V for listings of persons designated pursuant to this section. Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or who wish to assert that the circumstances resulting in designation no longer apply. Similarly, when a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds to have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction or dealing by U.S. persons or within the United States in property or interests in property blocked pursuant to paragraph (a) of this section is prohibited, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of the Taliban or persons designated pursuant to § 545.201(a).

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to January 11, 2001) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

§ 545.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 545.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 545.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall

validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (D) OF § 545.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date of § 545.201 there existed an interest of a person whose property or interests in property are blocked pursuant to § 545.201(a).

§ 545.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 545.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 545.201(a) may continue to be held

§ 545.204

until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 545.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 545.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to persons whose property or interests in property are blocked pursuant to § 545.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 545.204 Prohibited exportation, re-exportation, sale, or supply of goods, software, technology, or services.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of any goods, software, technology (including technical data), or services to the territory of Afghanistan controlled by the Taliban or to the Taliban or to persons whose property or interests in property are blocked pursuant to § 545.201 is prohibited.

§ 545.205 Prohibited importation of goods, software, technology, or services.

Except as otherwise authorized, and notwithstanding any contract entered

31 CFR Ch. V (7-1-04 Edition)

into or any license or permit granted prior to the effective date, the importation into the United States of any goods, software, technology, or services owned or controlled by the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201 or from the territory of Afghanistan controlled by the Taliban is prohibited.

§ 545.206 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 545.207 Expenses of maintaining blocked property; liquidation of blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before 12:01 a.m., Eastern Daylight Time, July 6, 1999, all expenses incident to the maintenance of physical property blocked pursuant to § 545.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 545.201 may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 545.208 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not

apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 545.305, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information and informational materials not yet created and completed (with the exception of prepaid subscriptions for widely-circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property and interests in property are blocked pursuant to § 545.201 or from the territory of Afghanistan controlled by the Taliban, payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730-774, or to the exportation of goods, technology or software, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property

or interests in property are blocked pursuant to § 545.201 are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(d) *Official Business.* The prohibitions contained in this part do not apply to transactions for the conduct of the official business of the United States Government or the United Nations by employees thereof.

(e) *Journalistic Activity.* The prohibitions contained in this part do not apply to transactions in the territory of Afghanistan controlled by the Taliban for journalistic activity by persons regularly employed in such capacity by a news-gathering organization.

(f) *Humanitarian donations.* The prohibitions contained in this part do not apply to donations by U.S. persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

Subpart C—General Definitions

§ 545.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property*, shall mean any account or property subject to the prohibitions in § 545.201 held in the name of the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201, or in which the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201 have an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 545.302

§ 545.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m., Eastern Daylight Time, on July 6, 1999.

§ 545.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group, or subgroup.

§ 545.304 Importation into the United States.

(a) With respect to goods, software, or technology, the term *importation into the United States* means the bringing of any goods, software, or technology into the United States. However, with respect to goods, software or technology being transported by vessel, *importation into the United States* means the bringing of any goods or technology into the United States with the intent to unlade. See also § 545.404.

(b) With respect to services, the term *importation into the United States* means the receipt in the United States of services or receipt in the United States of the benefit of services wherever such services may be performed. The benefit of services is received in the United States if the services are:

- (1) Performed on behalf of or for the benefit of a person located in the United States;
- (2) Received by a person located in the United States;
- (3) Received by a person located outside the United States on behalf of or for the benefit of an entity organized in the United States; or
- (4) Received by an individual temporarily located outside the United States for the purpose of obtaining such services for use in the United States.

§ 545.305 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

31 CFR Ch. V (7–1–04 Edition)

NOTE TO § 545.305(A). To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* with respect to United States exports does not include items:

- (1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the “EAA”), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or
- (2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 545.306 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., “an interest in property”) means an interest of any nature whatsoever, direct or indirect.

§ 545.307 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

NOTE TO § 545.307: See § 501.801 of this chapter on licensing procedures.

§ 545.308 Person.

The term *person* means an individual or entity.

§ 545.309 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers’ acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts,

bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 545.310 The Taliban.

(a) For purposes of this part, the term *the Taliban* includes:

(1) The political/military entity headquartered in Kandahar, Afghanistan that as of July 4, 1999, exercised de facto control over the territory of Afghanistan, described in § 545.310(a);

(2) Its agencies and instrumentalities;

(3) The Taliban leaders listed in the Annex to Executive Order 13129 (see appendix A of this chapter) and such additional leaders as may be designated by the Secretary of State in consultation with the Secretary of the Treasury and the Attorney General in accordance with section 4(c) of Executive Order 13129; and

(4) Persons designated pursuant to § 545.201(a)(2).

NOTE TO § 545.310. The Taliban is also known as the "Taleban," "Islamic Movement of Taliban," "the Taliban Islamic Movement," "Talibano Islami Tahrik," and "Tahrike Islami'a Taliban."

§ 545.311 Territory of Afghanistan controlled by the Taliban.

The term *territory of Afghanistan controlled by the Taliban* means the territory referred to as the "Islamic Emirate of Afghanistan," known in Pashtun as "de Afghanistan Islami Emarat" or

in Dari as "Emarat Islami-e Afghani-stan," including:

(a) As of July 4, 1999, the following provinces of the country of Afghanistan: Kandahar, Farah, Helmund, Nimruz, Herat, Badghis, Ghowr, Oruzghon, Zabol, Paktiha, Ghazni, Nangarhar, Lowgar, Vardan, Faryab, Jowlan, Balkh, and Paktika; and

(b) Thereafter, the description of the term *territory of Afghanistan controlled by the Taliban* may be modified by the Secretary of State in consultation with the Secretary of the Treasury and the Attorney General.

NOTE TO § 545.311. The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has added the City of Kabul to the *territory of Afghanistan controlled by the Taliban*. (See Public Notice 3151 of October 21, 1999, 64 FR 58879, November 1, 1999).

§ 545.312 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition,

§ 545.313

transportation, importation, exportation, or withdrawal of any security.

§ 545.313 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 545.314 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 545.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 545.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

31 CFR Ch. V (7–1–04 Edition)

§ 545.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 545.403 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction involving a person whose property or interests in property are blocked pursuant to § 545.201, or involving a debit to a blocked account or a transfer of blocked property, not explicitly authorized within the terms of the license; and

(b) Distribution or leasing in the territory of Afghanistan controlled by the Taliban of any containers or similar goods owned or controlled by U.S. persons after the performance of transportation services to the territory of Afghanistan controlled by the Taliban.

§ 545.404 Transshipment or transit through the United States prohibited.

Except as otherwise specified:

(a) The prohibitions in §§ 545.201 and 545.204 apply to the importation into the United States, for transshipment or transit, of foreign goods which are intended or destined for the Taliban or the territory of Afghanistan controlled by the Taliban.

(b) The prohibitions in §§ 545.201 and 545.205 apply to the importation into the United States, for transshipment or transit to third countries, of goods owned or controlled by the Taliban or

from the territory of Afghanistan controlled by the Taliban which are intended or destined for third countries.

(c) Goods, software, or technology in which the Taliban have an interest that are imported into or transshipped through the United States are blocked pursuant to § 545.201.

NOTE TO § 545.404: See § 545.304 for the definition of the term *importation into the United States*.

§ 545.405 [Reserved]

§ 545.406 Exportation of services; performance of service contracts; legal services.

(a) The prohibition on transactions involving blocked property and the exportation of services contained in §§ 545.201 and 545.204 applies to services performed on behalf of the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201 or where the benefit of such services is otherwise received in the territory of Afghanistan controlled by the Taliban, when such services are performed:

(1) In the United States;

(2) Outside the United States by a U.S. person, including by an overseas branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Taliban, including persons whose property or interests in property are blocked pursuant to § 545.201, is presumed to have been received in the territory of Afghanistan controlled by the Taliban.

NOTE TO § 545.406. See § 545.513 with regard to provision of certain legal services and § 545.516 with regard to the provision of certain financial services.

§ 545.407 Services performed in the territory of Afghanistan controlled by the Taliban.

The prohibitions on transactions involving blocked property and certain transactions or dealings in that property and the importation into the United States of services contained in §§ 545.201 and 545.205, respectively, apply to services performed in the territory of Afghanistan controlled by the

Taliban or by the Taliban, wherever located, when the benefit of such services is received in the United States or by a U.S. person outside the United States. See § 545.304 for the definition of the term *importation into the United States* and a description of circumstances in which the benefit of services is considered to be received in the United States.

§ 545.408 Offshore transactions.

(a) The prohibitions contained in § 545.201 apply:

(1) To transactions by any U.S. person in a location outside the United States with respect to property in which the U.S. person knows, or has reason to know, that the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201 have or have had an interest since the effective date; and

(2) With respect to goods, software, technology, or services which the U.S. person knows, or has reason to know, are from the territory of Afghanistan controlled by the Taliban.

(b) Prohibited transactions include, but are not limited to:

(1) Importation into or exportation from locations outside the United States of goods, software, technology or services owned or controlled by the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201; or

(2) Purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, transforming, brokering or otherwise dealing in such blocked goods, software, technology, or services.

(c) *Example.* A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in goods (such as carpets, fruits, or nuts), owned or controlled by the Taliban or by persons whose property or interests in property are blocked pursuant to § 545.201 or which comes from the territory of Afghanistan controlled by the Taliban.

§ 545.409 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, software, technology, or services exported prior to the effective date, except as authorized pursuant to this part.

§ 545.410 Acquisition of instruments including bankers acceptances.

No U.S. persons may acquire or deal in any obligation, including bankers acceptances and debt of or guaranteed by a person whose property or interests in property are blocked pursuant to § 545.201, in cases in which the documents evidencing the obligation indicate, or the U.S. person has actual knowledge, that the underlying transaction is in violation of §§ 545.201 and 545.204 through 545.206. This interpretation does not apply to obligations arising from an underlying transaction licensed or otherwise authorized pursuant to this part.

§ 545.411 Exportation to third countries; transshipments.

Except as otherwise specified, exportation of goods, software, or technology from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods, software, or technology are intended for reexportation or transshipment to the Taliban, to persons whose property or interests in property are blocked pursuant to § 545.201, or to the territory of Afghanistan controlled by the Taliban, including passage through, or storage in, intermediate destinations.

§ 545.412 Release of goods originating in the territory of Afghanistan controlled by the Taliban from a bonded warehouse or foreign trade zone.

Section 545.205 does not prohibit the release from a bonded warehouse or foreign trade zone of goods originating in the territory of Afghanistan controlled by the Taliban imported into a bonded warehouse or foreign trade zone either prior to the effective date or in a transaction authorized pursuant to this part after the effective date.

NOTE TO § 545.412: Property in which the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201 have an interest may not be released unless authorized or licensed by the Office of Foreign Assets Control.

§ 545.413 Importation of goods from third countries; transshipments.

(a) Importation into the United States from third countries of goods containing raw materials or components originating in the territory of Afghanistan controlled by the Taliban is not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

(b) Importation into the United States of goods originating in the territory of Afghanistan controlled by the Taliban that have been transshipped through a third country without being incorporated into manufactured products or otherwise substantially transformed in a third country is prohibited.

§ 545.414 Loans or extensions of credit.

(a) The prohibitions in §§ 545.201 and 545.204 apply to loans or extensions of credit to a person in the territory of Afghanistan controlled by the Taliban, including overdraft protection on checking accounts, and the unauthorized renewal or rescheduling of credits or loans in existence as of 12:01 a.m., Eastern Daylight Time, July 6, 1999, whether by affirmative action or operation of law.

(b) The prohibitions in §§ 545.201 and 545.204 apply to financial services including loans or credits extended in any currency.

§ 545.415 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

Pursuant to § 545.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, technology or services exported prior to the effective date, except as authorized pursuant to this part.

§ 545.416 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this

part results in the transfer of property (including any property interest) away from a person whose property or interests in property are blocked pursuant to § 545.201, such property shall no longer be deemed to be property blocked pursuant to § 545.201, unless there exists in the property another interest that is blocked pursuant to § 545.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or interests in property are blocked pursuant to § 545.201, such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 545.417 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 545.201 if effected after the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 545.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53658, Sept. 11, 2003]

§ 545.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such licenses or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 545.502 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 545.503 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which the Taliban or a person whose property or interests in property are blocked pursuant to § 545.201 has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no

transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

NOTE TO § 545.503. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 545.203 concerning the obligation to hold blocked funds in interest bearing accounts.

§ 545.504 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 545.505 Importation of goods, software, or technology exported from the territory of Afghanistan controlled by the Taliban prior to July 6, 1999.

(a) Except for the persons and property described in paragraph (c) below, importation of goods, software, or technology from the territory of Afghanistan controlled by the Taliban is authorized provided that:

(1) The applicant submits proof satisfactory to the U.S. Customs Service that the goods, software, or technology were exported from the territory of Afghanistan controlled by the Taliban before the effective date; and

(2) The importation is not otherwise prohibited by U.S. law.

NOTE TO § 545.505(A). The general license in § 545.505(a) does not extend to services.

(b) The type of evidence that would constitute proof satisfactory to the U.S. Customs Service of the location of goods, software, or technology outside the territory of Afghanistan controlled by the Taliban before the effective date may vary depending on the facts of a particular case. However, independent corroborating documentary evidence issued and certified by a disinterested party normally will be required. This might include contracts, insurance documents, shipping documents, warehouse receipts, and appropriate customs documents, accompanied by a certification of an insurance agent, warehouse agent, or other appropriate person, identifying with particularity the goods sought to be imported and attesting that the goods concerned were located outside the territory of Afghanistan controlled by the Taliban at a time prior to the effective date. In general, affidavits, statements and other documents prepared by the applicant or other interested parties will not, by themselves, constitute satisfactory proof.

(c) The authorization in paragraph (a) above, shall not apply to any goods, software, or technology in which the Taliban or persons whose property or interests in property are blocked pursuant to § 545.201 have any interest.

§ 545.506 Importation of certain gifts authorized.

The importation into the United States of goods from the territory of Afghanistan controlled by the Taliban or from a person whose property or interests in property are blocked pursuant to § 545.201 is authorized for goods sent as gifts to persons provided that:

(a) The value of a gift is not more than \$100 per recipient;

(b) The goods are of a type and in quantities normally given as gifts between individuals; and

(c) The goods are not controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP) (see Commerce Control List, 15 CFR part 774, supplement No. 1, of the Export Administration Regulations).

§ 545.507 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from the territory of Afghanistan controlled by the Taliban are authorized to import into the United States accompanied baggage normally incident to travel.

(b) Persons leaving the United States for the territory of Afghanistan controlled by the Taliban are authorized to export from the United States accompanied baggage normally incident to travel.

(c) For purposes of this section, the term *accompanied baggage normally incident to travel* includes only baggage that accompanies the traveler on the same aircraft, train, or vehicle, and includes only articles that are necessary for personal use incident to travel, that are not intended for any other person or for sale, and that are not otherwise prohibited from importation or exportation under applicable United States laws.

§ 545.508 Transactions related to telecommunications authorized.

All transactions ordinarily incident to the receipt or transmission of telecommunications involving the territory of Afghanistan controlled by the Taliban are authorized. This section does not authorize the provision, sale, or lease to the Taliban, or to persons whose property or interests in property are blocked pursuant to § 545.201, or to the territory of Afghanistan controlled by the Taliban, of telecommunications equipment or technology; nor does it authorize the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity).

§ 545.509 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between the United States and the territory of Afghanistan controlled by the Taliban are authorized, provided that mail is limited to personal communications not involving a transfer of anything of value.

§ 545.510 Importation of household and personal effects authorized.

The importation of household and personal effects originating in the territory of Afghanistan controlled by the Taliban, including baggage and articles for family use, of persons arriving in the United States, directly or indirectly from the territory of Afghanistan controlled by the Taliban, is authorized; to qualify, articles included in such effects must actually have been used abroad by such persons or by other family members arriving from the same foreign household, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation.

§ 545.511 Registration of nongovernmental organizations for humanitarian or religious activities.

(a) Registration numbers may be issued on a case-by-case basis for the registration of nongovernmental organizations involved in humanitarian or religious activities in the territory of Afghanistan controlled by the Taliban, authorizing transactions by such organizations otherwise prohibited by this part, including the exportation of goods, software, technology or services to the territory of Afghanistan controlled by the Taliban and the transfer of funds to and from the territory of Afghanistan controlled by the Taliban for the purpose of relieving human suffering. Applicants for registration numbers must comply with the requirements of § 501.801(c).

(b) This section does not authorize transfers from blocked accounts.

NOTE TO § 545.511: Registration does not excuse a U.S. person from compliance with other applicable U.S. laws governing the exportation or reexportation of U.S.-origin goods, software, or technology (including technical data). See, e.g., the Export Administration Regulations administered by the U.S. Department of Commerce (15 CFR parts 730-774).

§ 545.512 Payment of obligations to U.S. persons authorized.

(a) The transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person solely for the purpose of payment

of obligations owed to U.S. persons, including a payment of such obligations of persons whose property or interests in property are blocked pursuant to § 545.201, is authorized, provided that (1) the obligation arose prior to the effective date or is otherwise authorized or not prohibited pursuant to statute or the provisions of this part; (2) the payment requires no debit to a blocked account; and (3) the U.S. person is not blocked pursuant to this chapter V.

(b) A person receiving payment under this section may distribute all or part of that payment to any person, provided that any such payment to a person whose property or interests in property are blocked pursuant to § 545.201 must be to a blocked account in a U.S. financial institution.

NOTE TO § 545.512: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 545.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 545.513 Provision of certain legal services authorized.

(a) The provision of the legal services set forth in paragraph (b) of this section to or on behalf of persons whose property or interests in property are blocked pursuant to § 545.201, and the exportation of such legal services to persons located in the territory of Afghanistan controlled by the Taliban or in circumstances in which the benefit is otherwise received in the territory of Afghanistan controlled by the Taliban, are authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

(b) Specific licenses may be issued on a case-by-case basis authorizing receipt from unblocked sources of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to persons specified in paragraph (a) of this section:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) The provision or exportation of any other legal services to persons whose property or interests in property are blocked pursuant to § 545.201 or who are located in the territory of Afghanistan controlled by the Taliban, not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 545.201 is prohibited unless specifically licensed in accordance with § 545.202(e).

§ 545.514 Payments for services rendered by the Taliban to aircraft.

(a) Specific licenses may be issued on a case-by-case basis for authorization of payments to the Taliban, to persons whose property or interests in property are blocked pursuant to § 545.201, or to persons within the territory of Afghanistan controlled by the Taliban of charges for services rendered in connection with the overflight of the territory of Afghanistan controlled by the Taliban or emergency landing in the territory of Afghanistan controlled by the Taliban by aircraft. Any such payments shall be made consistent with United Nations Security Council Resolution 1267.

(b) Specific licenses may be issued on a case-by-case basis for the exportation, reexportation, sale, or supply, directly or indirectly, of goods, software, technology, and services to ensure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft.

§ 545.515 Certain transactions related to patents, trademarks, and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Afghanistan are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection, including importation of or dealing in services or payment for services from the Taliban, persons whose property or interests in property are blocked pursuant to § 545.201, or from persons within the territory of Afghanistan controlled by the Taliban connected to such intellectual property protection;

(2) The receipt of patent, trademark, copyright, or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) Nothing in this section affects obligations under any other provision of law.

§ 545.516 Certain payments to or from the territory of Afghanistan controlled by the Taliban.

(a) United States financial institutions, as defined in § 545.314, are authorized to process transfers of funds to or from the territory of Afghanistan controlled by the Taliban if the transfer is covered in full by any of the following conditions and does not involve debiting a blocked account on the books of a U.S. financial institution:

(1) The transfer arises from an underlying transaction that has been authorized by a specific license, general license, or nongovernmental organization's registration number issued pursuant to this part; or

(2) The transfer arises from an underlying transaction that is not prohibited by or that is exempted from the prohibitions of this part, such as an exportation of information or informational materials to the territory of Afghanistan controlled by the Taliban, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering.

(b) With respect to transactions meeting the conditions of paragraph (a) of this section, before a United States depository institution initiates a payment on behalf of any U.S. non-bank customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States depository institution must determine that the underlying transaction is not prohibited by this part. To meet this requirement, a United States depository institution must either obtain a copy of the applicable specific license or nongovernmental organization's registration number or obtain a certification from the customer or beneficiary confirming that the transaction is authorized by a general license or not prohibited by this part. Such a certification will not meet the requirements of this section if the United States depository institution knows or has reason to know that any part of the certification is false.

§ 545.517 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to § 545.201 is authorized, provided that all receipt of payment for such services must be specifically licensed.

§ 545.518 Investment and reinvestment of certain funds.

Subject to the requirements of § 545.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 545.201, subject to the following conditions:

§ 545.519

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property or interests in property are blocked pursuant to § 545.201.

§ 545.519 Payments and transfers authorized for goods and services exported to the territory of Afghanistan controlled by the Taliban prior to the effective date.

(a) Specific licenses may be issued on a case-by-case basis to permit payment involving an irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank, from a blocked account or otherwise, of amounts owed to or for the benefit of a person with respect to goods, software, technology, or services exported prior to the effective date, directly or indirectly to the territory of Afghanistan controlled by the Taliban, or to third countries for an entity operated from territory of Afghanistan controlled by the Taliban, or for the benefit of the Taliban, where the license application presents evidence satisfactory to the Office of Foreign Assets Control that the exportation occurred prior to the effective date (such evidence may include, for example, the bill of lading, the air waybill, the purchaser's written confirmation of completed services, customs documents, and insurance documents).

(b) This section does not authorize the exportation of goods, software, technology, or services after the effective

31 CFR Ch. V (7-1-04 Edition)

date pursuant to a contract entered into, or partially performed, prior to the effective date.

§ 545.520 Noncommercial personal remittances to or from the territory of Afghanistan controlled by the Taliban.

United States financial institutions, as defined in § 545.314, are authorized to process transfers of funds to or from the territory of Afghanistan controlled by the Taliban in cases in which the transfer involves a noncommercial, personal remittance, provided the beneficiary is not a person whose property or interests in property are blocked pursuant to § 545.201 or any other part of this chapter and the transfer is not by, to, or through a person whose property or interests in property are blocked pursuant to § 545.201 or any other part of this chapter V.

§ 545.521 Transactions related to U.S. citizens residing in the territory of Afghanistan controlled by the Taliban.

U.S. citizens who reside on a permanent basis in the territory of Afghanistan controlled by the Taliban are authorized to engage in transactions within the territory of Afghanistan controlled by the Taliban ordinarily incident to their routine and necessary maintenance and other personal living expenses.

NOTE TO § 545.521. This provision does not authorize U.S. financial institutions, as defined in § 545.314, to transfer funds to persons whose property or interests in property are blocked pursuant to § 545.201.

§ 545.522 Operation of accounts.

The operation of an account in a U.S. financial institution, as defined in § 545.314, for a natural person in the territory of Afghanistan controlled by the Taliban, other than a person whose property or interests in property are blocked pursuant to § 545.201, is hereby authorized; however, such operation may not include the execution of transactions in support of transactions or activities prohibited by subpart B of this part.

§ 545.523 Extensions or renewals of letters of credit authorized.

(a) The extension or renewal, at the request of the account party, of a letter of credit or a standby letter of credit issued or confirmed by a U.S. financial institution is authorized, provided the transfer of funds is not made to a blocked account.

(b) Transactions conducted pursuant to this section must be reported to the Compliance Programs Division of the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW., Annex, Washington, D.C. 20220, within 10 days after completion of the transaction.

§ 545.524 Extensions or renewals of loans.

Specific licenses may be issued on a case-by-case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates in connection therewith, provided that no new funds or credits are thereby transferred or extended to the Taliban, persons whose property or interests in property are blocked pursuant to § 545.201, or persons in the territory of Afghanistan controlled by the Taliban.

§ 545.525 Certain services relating to participation in various events and activities authorized.

(a) The importation into the United States or other dealing in services originating in the territory of Afghanistan controlled by the Taliban is authorized where such services are performed in the United States by a person from the territory of Afghanistan controlled by the Taliban who enters the United States on a visa issued by the State Department for the purpose of, or which services relate directly to, participation in a public conference, performance, exhibition or similar event, provided such services are consistent with that purpose.

(b) Persons otherwise qualified for a non-immigrant visa under categories A-3 and G-5 (attendants, servants and personal employees of aliens in the United States on diplomatic status), D

(crewmen), F (students), I (information media representatives), J (exchange visitors), M (non-academic students), O and P (aliens with extraordinary ability, athletes, artists and entertainers), Q (international cultural exchange visitors), R (religious workers), or S (witnesses) are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department.

(c) Persons otherwise qualified for a visa under categories E-2 (treaty investor), H-1b (temporary worker), or L (intra-company transferee) and all immigrant visa categories are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Taliban, or a person whose property or interests in property are blocked pursuant to § 545.201, or a business entity or other organization territory of Afghanistan controlled by the Taliban.

§ 545.526 Certain importations for diplomatic or official personnel authorized.

All transactions ordinarily incident to the importation into the United States of any goods, software, technology or services from the territory of Afghanistan controlled by the Taliban that are not for sale and are destined for official or personal use by personnel employed by the diplomatic missions of the Taliban to the United States and to international organizations located in the United States are authorized, unless the importation is otherwise prohibited by law.

§ 545.527 Diplomatic pouches.

All transactions in connection with the importation into the United States from the territory of Afghanistan controlled by the Taliban, or the exportation from the United States to the territory of Afghanistan controlled by the Taliban, of diplomatic pouches and their contents are authorized.

Subpart F—Reports

§ 545.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 545.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the “Act”) (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed \$11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than \$50,000, and if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001(a), which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent state-

ment or representation, or makes or uses any materially false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 545.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency’s intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice—(1) Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent’s right to make a written presentation within the applicable 30 day period set forth in section 545.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency’s potential civil monetary penalty claims. In the event

the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 545.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30 day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response

may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the

prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 545.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Di-

rector is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 545.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 545.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[66 FR 2729, Jan. 11, 2001, as amended at 68 FR 53658, Sept. 11, 2003]

§ 545.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13129 of July 4, 1999 (64 FR 36759, July 7, 1999) and any further Executive orders relating to the national emergency declared in Executive Order 13129 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act**§ 545.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

PART 550—LIBYAN SANCTIONS REGULATIONS**Subpart A—Relation of This Part to Other Laws and Regulations**

Sec.

550.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

550.201 Prohibited imports of goods or services from Libya.
 550.202 Prohibited exports of goods, technology or services to Libya.
 550.203 Prohibited transportation-related transactions.
 550.204 Prohibited purchases of goods from Libya.
 550.205 Prohibited engagement in contracts.
 550.206 Prohibited grants or extensions of credits or loans.
 550.207 Prohibited transactions relating to travel to Libya or to activities within Libya.
 550.208 Evasions.

550.209 Prohibited transactions involving property in which the Government of Libya has an interest; transactions with respect to securities.

550.210 Effect of transfers violating the provisions of this part.

550.212 Holding of certain types of blocked property in interest-bearing accounts.

Subpart C—Definitions

550.301 Effective date.
 550.302 Libya; Libyan.
 550.303 Libyan origin.
 550.304 Government of Libya.
 550.305 Libyan person.
 550.306 Person.
 550.307 United States.
 550.308 United States person.
 550.309 License.
 550.310 General license.
 550.311 Specific license.
 550.312 Credits or loans.
 550.313 Transfer.
 550.314 Property; property interests.
 550.315 Interest.
 550.316 Blocked account; blocked property.
 550.317 Domestic bank.
 550.318 Entity.
 550.319 Entity of the Government of Libya; Libyan entity.
 550.320 Banking institution.

Subpart D—Interpretations

550.401 Reference to amended sections.
 550.402 Effect of amendment of sections of this part or of other orders, etc.
 550.403 Extensions of credits or loans to Libya.
 550.404 Import and export of goods in transit before the effective date.
 550.405 Transactions incidental to a licensed transaction authorized.
 550.406 Offshore transactions.
 550.407 Transshipment through the United States prohibited.
 550.408 Imports from third countries; transshipments.
 550.409 Exports to third countries; transshipment.
 550.410 Release from bonded warehouse or foreign trade zone.
 550.411 Publications.
 550.412 Termination and acquisition of an interest of the Government of Libya.
 550.413 Payments to Libya prohibited.
 550.414 Exports of Libyan-titled goods.
 550.415 Advance payments.
 550.416 Imports of Libyan goods and purchases of goods from Libya.
 550.417 Letters of credit.
 550.418 Payments from blocked accounts for U.S. exporters and other obligations prohibited.
 550.419 Acquisition of instruments, including bankers' acceptances.